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# Supreme Court of the United States

October Term, 1946.

No. **229**

WILLIAM TALMADGE SPEARS, BETTIE TUNSELL,  
and ISAIAH H. SPEARS, (I. H. SPEARS),  
*Petitioners-Appellants,*

vs.

EVA MAE SPEARS, Individually and EVA MAE  
SPEARS, as Special Administrator of the Estate of DR.  
MANSFIELD L. SPEARS, Deceased, AETNA CASU-  
ALTY & SURETY COMPANY OF HARTFORD,  
CONN., and COMMUNITY NATIONAL BANK OF  
PONTIAC, MICHIGAN,

*Respondents-Appellees.*

## PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

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IN THE  
Supreme Court of the United States

October Term, 1946.

No. ....

WILLIAM TALMADGE SPEARS, BETTIE TUNSELL,  
and ISAIAH H. SPEARS, (I. H. SPEARS),  
*Petitioners-Appellants,*

vs.

EVA MAE SPEARS, individually and EVA MAE  
SPEARS, as special administrator of the estate of DR.  
MANSFIELD L. SPEARS, Deceased, AETNA CAS-  
UALTY & SURETY COMPANY OF HARTFORD,  
CONN., and COMMUNITY NATIONAL BANK of  
Pontiac, Michigan,

*Respondents-Appellees.*

**PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE SIXTH CIRCUIT.**

To the Honorable Chief Justice of the United States,  
and Associate Justices of the Supreme Court of the United  
States:

Your petitioners respectfully show:

I.

That Mansfield L. Spears departed this life, testate, on  
the 16th day of September 1945, a Citizen of the United

States, resident at Pontiac, Michigan leaving an estate of approximately \$45,000.00, personal and real property, all in his sole name; left several wills, a wife, Eva Mae Spears, one of the defendans, a son, William Talmadge Spears, one of the petitioners, and several brothers and sisters; that Bettie Tunsell, one of the petitioners is a sister named in one of the wills; that Isaiah H. Spears, one of the petitioners, is an assignee of the other petitioners;

That all of the petitioners are citizens of California and Florida, that all the respondents are citizens of the State of Michigan.

That the amount in controversy exceeds the sum of \$3,000.00, exclusive of interest and costs in favor of each petitioner as against each respondent. This is a suit of a civil nature, in equity, brought by non-resident citizens of the United States, authorized to sue, of which Federal Court are given jurisdiction by Article III, Section 2, Constitution of the United States, and Act of Congress, Section 24 (1), 28 U. S. C. A. Section 41 (1).

This case is a controversy within the meaning of Art. III Sec. 2, Const. United States.

## II.

This is a suit in equity brought in the District Court of the United States for the Eastern District of Michigan, Southern Division by William Talmadge Spears, Bettie Tunsell, and Isaiah H. Spears, petitioners, against Eva Mae Spears, Individually, and Eva Mae Spears, as Special Administratrix of the Estate of Dr. Mansfield L. Spears, Deceased, Aetna Casualty & Surety Company of Hartford, Conn., and Community National Bank of Pontiac, Michigan, Respondents, for a claimed share in the estate of Mansfield L. Spears, deceased, and asking an accounting; declaration



of heirship; construction of a will; declaration of interest of Mansfield L. Spears, deceased, Estate in the bank account in the defendant Community National Bank of Pontiac, Michigan in the sole name of Mansfield L. Spears or M. L. Spears on the 16th day of September 1945; declaration of plaintiffs' interest in the estate of Mansfield L. Spears, deceased; quieting title to the land described in complaint in William Talmadge Spears as heir at law of Mansfield L. Spears, deceased; partitioning of interest; and judgment against the administrator in such sum as may be found due under an accounting in favor of said estate (Tr. p. 1 to 10 and Supplemental Tr. Exhibit I at pages 1 and 2, Certified Record in this cause).

This is a Case and a Controversy within the meaning of Article III Section 2 Constitution of the United States and the Acts of Congress made in pursuance thereof of which the Federal Courts have jurisdiction.

The respondents were served with a summons and a copy of the complaint (see Tr. pages 11, 12, 23, 24 and 25); the respondents, each filed motion to dismiss, and Aetna Casualty & Surety Company also filed motion to QUASH (Tr. pages 11 to 22 and Supplemental Tr. Exhibits I to XI, pages 1 to 43).

The District Court rendered judgment in favor of respondents, sustaining the motions and dismissing the suit (Tr. 22 and 23).

Petitioners prosecuted an appeal from said judgment to the Circuit Court of Appeals for the Sixth Circuit, which Court on the 5th day of June 1947, affirmed the judgment of the District Court in all parts except one, and directed the District Court to dismiss said cause with prejudice. (Tr. Supplemental page 46 and following, including Opinion.)

(a) Petitioners say the Honorable Circuit Court of Appeals for the Sixth Circuit committed error in holding that the Federal Court has no jurisdiction in this case.

*Suydam v. Broadnax*, 14 Pet. 67; *Hyde v. Stone*, 20 How. 170-6; 28 U. S. C. A. 41 (1); Art. III, Sec. 2 Const. U. S.; *Markham v. Allen*, 326 U. S. 490 and cited Cases.

(b) Petitioners say said decision is in conflict with the decisions of other Circuit Court of Appeals in similar matter.

*Miama County Nat. Bank of Paola Kansas v. Bancroft*, 121 F. 2nd 921;  
*Blacker v. Thatcher*, 145 F. 2nd 255;  
*Rosenberg v. Baum*, 153 F. 2nd 13;

(c) Said decision is in conflict with a long line of decisions of the Supreme Court of the United States on the same Federal question as to controversies and cases within the meaning of Article III of the Constitution and the Acts of Congress made in pursuance thereof.

*Markham v. Allen*, 326 U. S. 490, and cases cited.

(d) The judgment of the Honorable Circuit Court of Appeals for the Sixth Circuit is in conflict with the decisions of the Supreme Court of the United States established by a long series of decisions of said Court, that Federal Courts of equity have jurisdiction to entertain suits "in favor of creditors, legatees, heirs," and other claimants against a decedent's estate "to establish their claims" so long as the Federal court does not interfere with the probate proceeding or assume general control of the property in the custody of the state court.

*Markham v. Allen*, 326 U. S. 490, and cases cited.

(e) The Honorable Circuit Court of Appeals for the Sixth Circuit committed error in attempting to abdicate

its authority and jurisdiction under Art. III of the Constitution and the Acts of Congress to other jurisdictions.

Hyde v. Stone, 20 How. 170, 176;

Suydam v. Broadnax, 14 Pet. 67; 54 Am. Jur. Sec. 8, and Sec. 343.

The fact that the District Court in the exercise of the jurisdiction which Congress has conferred upon it, is required to interpret state law is not of itself a sufficient reason for withholding relief to petitioners. *Mundet v. Winter Haven*, 320 U. S. 228.

The Honorable Circuit Court of Appeals for the Sixth Circuit committed error in giving judgment directing the District Court to dismiss with prejudice, since that case arises under the Constitution and Act of Congress and is not subject to restrictions or ouster by state legislation, directly or indirectly.

Art. III Sec. 2; 28 U. S. C. A. 41 (1).

And disclosing basis for contention the United States Supreme Court has jurisdiction to review the judgment, further,

(f) The petitioners-appellants are citizens of California and Florida; Respondents-appellees are citizens of Michigan; the amount in controversy exclusive of interest and costs, exceeds \$3,000.00 (Tr. pages 1 to 10 and Supplemental Tr. Exhibit I pages 1 and 2); the Honorable Circuit Court of Appeals for the Sixth Circuit committed error in holding that the Federal Court was without jurisdiction and directing the District Court to dismiss with prejudice (Tr. Supplemental following page 46 and opinion).

Art. III Sec. 2, Const. U. S.

28 U. S. C. A. 41 (1);

28 U. S. C. A. 112, Sec. 2.

1 Stat. 275, 276, 28 U. S. C. A. following 723 C.

Miss. Pub. Co. v. Murphree, 326 U. S. 440, 441.

(g) The Circuit Court of Appeals for the Sixth Circuit committed error in deciding a Federal question in a way probably in conflict with the applicable decisions of the Supreme Court of the United States.

*Williams et al. v. Green Bay & Western R. Co.*, 326 U. S. 560.

(h) The Circuit Court of Appeals for the Sixth Circuit has departed from the accepted and usual course of judicial proceedings, or so far sanctioned such departure by the lower Court as to call for the exercise of the Supreme Court's supervision.

(i) The Circuit Court of Appeals for the Sixth Circuit in rendering judgment dismissing this cause with prejudice has rendered judgment in conflict with the established long series of decisions of the Supreme Court of the United States to the contrary.

*Markham v. Allen*, 326 U. S. 490, and cases cited.

### Questions Presented.

#### 1.

Does the District Court of the United States have jurisdiction of a suit in equity brought by petitioners against respondents to determine their asserted right to share in decedent's estate which is in course of probate administration in the state court?

#### 2.

Has the Federal Court equitable jurisdiction to require an accounting against respondents, and in favor of the

estate, and petitioners, in order to determine petitioners' interest?

## 3.

Has the Federal Court jurisdiction to declare or determine heirship of William Talmadge Spears and his interest as sole heir in the estate of Mansfield L. Spears, deceased?

## 4.

Has the Federal Court jurisdiction to construe a will so as to determine such interest; to declare interest of petitioners, to declare the interest of the Mansfield L. Spears, deceased, estate in the \$18,240.00 plus in the hands of the defendant, Community National Bank of Pontiac, Michigan in the sole name of Mansfield L. Spears or M. L. Spears, September 16, 1945?

## 5.

The Reasons relied on for the Writs.

The Const. U. S. Art. III Sec. 2, and Act of Congress 28 U. S. C. A. 41 (1);

28 U. S. C. A. 112, Sec. 2, Give Federal Courts Jurisdiction, and the Judgment

of the Honorable Circuit Court of Appeals for the Sixth Circuit is in conflict with Art. III Sec. 2, U. S. Const. and the Acts of Congress made in pursuance thereof.

Section 240 (a) of the Judicial Code, Amended, provides, In any case, Civil or criminal, in a Circuit Court of Appeals, it shall be competent for the Supreme Court of the United States upon petition of any party thereto, whether government, or other litigant, to require by Certiorari,

either before, or after a judgment or decree by such lower court, that the cause be certified to the Supreme Court for determination by it with the same power and authority, and with the like effect, as if the cause had been brought there by unrestricted Writ of Error or Appeal.

Your petitioners believe that the aforesaid judgment of the Honorable Circuit Court of Appeals for the Sixth Circuit is erroneous and that this Honorable Court should require the said case to be certified to it for its review and determination in conformity with the provisions of the Act of Congress in such cases made and provided.

WHEREFORE, Your Petitioners respectfully pray that a Writ of Certiorari may be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Sixth Circuit Commanding the said Court to Certify and send to this Court on a day certain to be therein designated, a full and complete transcript of the record and all proceedings of the said Circuit Court of Appeals in said case therein, entitled, William Talmage Spears, Bettie Tunsell, and I. H. Spears, Plaintiffs-Appellants-Petitioners vs. Eva Mae Spears, Individually, and Eva Mae Spears, as Special Administratrix of the Estate of Dr. Mansfield L. Spears, deceased, Aetna Casualty & Surety Company of Hartford, Conn., and Community National Bank of Pontiac, Michigan, Defendants-Appellees-Respondents, No. 10,383, to the end that said case may be reviewed and determined by this court as provided in Judicial Code Section 240 (a) or that your petitioners may have such other or further relief or remedy in the premises, as to this court may seem meet and appropriate and in conformity with said Act and that the said judgment of the said Circuit Court of Appeals in the said

case, and every part thereof, may be reviewed by this Honorable Court.

And your petitioners will ever pray.

I. H. SPEARS,  
*Counsel.*

GEORGE M. JOHNSON,  
*of Counsel.*

District of Columbia, }  
City of Washington. } ss.:

I. H. SPEARS, being duly sworn, says that he is Counsel for petitioners above named, and as such had personal charge for them of the Case in the foregoing petition mentioned in the District Court of the United States for the Eastern District of Michigan, and in the United States Circuit Court of Appeals for the Sixth Circuit, that he has read the said petition by him subscribed and that the facts therein stated are true to the best of his knowledge, information and belief.

I. H. SPEARS.

Subscribed and sworn to before me  
this 10th day of July, 1947.

Joseph H. Greene,  
(Seal) Notary Public in and for Dist. of Columbia,  
My Commission expires Feb. 14, 1948.

## BRIEF IN SUPPORT OF PETITION.

Petitioners are citizens of California and Florida; Respondents are citizens of Michigan; the amount in controversy as to each petitioner as against each respondent is in excess of \$3,000.00, exclusive of interest and costs (R. 1 to 6).

Petitioners brought this suit in equity in the United States District Court for the Eastern District of Michigan, Southern Division, asserting an interest in the estate of Mansfield L. Spears, deceased, which estate is in course of probate administration in a state court. This suit is brought against the respondents, and petitioners ask an accounting, declaration of heirship, construction of a will, declaration of interest of petitioners in the estate of Mansfield L. Spears, deceased, declaration of interest of the estate in and to the \$18,234.00 plus in the hands of the defendant, Community National Bank of Pontiac, Michigan in the sole name of Mansfield or M. L. Spears on the 16th day of September 1945; quieting title and partition (R. 1 to 10, Supp. R. Exhibit I, pages 1 and 2).

Article III of the Constitution provides that the judicial power of the United States shall extend to all cases between citizens of different states, and this section gives the District Court original jurisdiction of such cases, and using the language of the Court "one of the grounds of Federal Jurisdiction in Federal Court, is Diversity of Citizenship."

The Federal Courts have jurisdiction of controversies arising during the pendency of the administration of estates of decedents in the state Courts which condition the enforcement of their judgments or decrees or the rights of action of citizens of other states, or other parties, who might in-



voke their actions and their decisions prevail over the statutes of the states and the decisions of their Courts.

Art. III, Sec. 2, Const. U. S.

Act of Congress, 28 U. S. C. A. 41 (1).

Act of Congress, 28 U. S. C. A. 112, Sec. 2, 111 U. S. 223; 121 F. 2nd 921; 150 F. 2nd 679;

Blacker v. Thatcher, 145 F. 2nd 255 (R. 29).

The District Court on motion of respondents dismissed said suit (R. 12 to 23).

The petitioners appealed to the Circuit Court of Appeals for the Sixth Circuit (R. 26 to 28).

On June 5th, 1947, upon consideration of the record in said suit, the Honorable Circuit Court of Appeals for the Sixth Circuit dismissed said suit with prejudice (R. following page 46, and Opinion, Supplemental Record), which action was in conflict with the action of Circuit Court of Appeals of other Circuits, and the Supreme Court of the United States.

Griffith v. Bank of N. Y., 147 F. 2nd 899;

Miama County Nat'l Bank of Paola, Kansas v. Bancroft, 121 F. 2nd 921, Sylb. 2, 3, 4, 5, 10 11, 12;

R. C. P. Rule 12 (b), U. S. C. A. following 723c.

Kaffenberger v. Kremer, *et al.*, 4 F. R. D. 476-478;

Wieland v. Wickard, 250;

Burghane v. Radio Corp. of A., 4 F. R. D. 446;

U. S. v. Assn. Am. R. R., *et al.*, 4 F. R. D. 510;

Application Wis. Alum. Research Foundation, 4 F. R. D. 263;

Wall & B. Corp. v. Munson Lines, 58 F. Supp. 101-109;

Canal v. Munson Hotel Co., 149 F. 2nd 404; 61 F. Supp. 1;

Powell v. Rothensris, 47 F. Supp. 1019;  
 Lehigh Valley R. Co. v. Peaslee, 47 U. S. 55;  
 Boston Casualty Co. v. Bath Iron Works Corp., 47  
 F. Supp. 616;  
 Roselle v. Quinn, 47 F. Supp. 740;  
 Monhair v. Higgins, 39 F. Supp. 633; 132 F. 2nd  
 990;  
 Bowles v. Schultz, 54 F. Supp. 708;  
 Bowles v. Ohse, 4 F. R. D. 404;  
 Rule 8, 28 U. S. C. A. following 723c.

Said judgment entered in this cause by the Honorable  
 Circuit Court of Appeals for the Sixth Circuit, on the 5th  
 day of June 1947, is in conflict with the decisions of other  
 Circuit Court of Appeals on the same questions; has decided  
 an important Federal question in a way probably in conflict  
 with applicable decisions of this Court, and has so far  
 departed from the accepted and usual course of Judicial  
 proceedings, and sanctioned such a departure by a lower  
 court, as to call for an exercise of this Court's power of  
 supervision.

Suydam v. Broadnex, 14 Pet. 67;  
 Hyde v. Stone, 20 How. 175.  
 Union Bank v. Jolly, Adm'r, 18 How. 503;  
 Markham v. Allen, 326 U. S. 490, and cited cases.

The Honorable Circuit Court of Appeals for the Sixth  
 Circuit committed error in dismissing said suit with preju-  
 dice, for that said judgment is in conflict with a well estab-  
 lished long series of decisions of this court, that the Federal  
 Courts of equity have jurisdiction to entertain suits "in  
 favor of creditors, legatees, and heirs" and other claimants,  
 against a decedent's estate "to establish their claims" as  
 long as the federal court does not interfere with the pro-  
 bate proceedings or assume general jurisdiction of the pro-

bate or control of the property in the custody of the state court.

Snydam v. Broadnax, 14 Pet. 67;

Payne v. Hook, 7 Wall. 425, 430;

Blacker v. Thatcher, 145 F. 2nd 255; 324 U. S. 848;  
158 A. L. R. 1;

Markham v. Allen, 326 U. S. 490, and cases cited.

The Circuit Court of Appeals for the Sixth Circuit by its judgment entered in this cause on the 5th day of June 1947, committed error by denying each of the five propositions urged by petitioners as set out in the transcript of record (R. 28, 29, and 30 which is made a part of this brief by reference, and urged as grounds for reversal of the judgment of the Circuit Court of Appeals for the Sixth Circuit as fully as same was urged for reversal of the judgment of the District Court (R. 28-30).)

### **Argument.**

The jurisdiction of the federal court to determine heirship, and interest of creditors, legatees, heirs, and other claimants, is derived from the Constitution and Statutes of the United States, and may not be restricted, or abridged by a state's establishing courts and giving them exclusive jurisdiction over the settling of estates of decedents.

When Diversity of Citizenship and the requisite jurisdictional amount are present, Federal Courts have jurisdiction in equity to determine whether litigants are heirs of a deceased person and their share or asserted interest in his estate.

U. S. Const. Art. III, Sec. 2; 28 U. S. C. A. 41 (1);

28 U. S. C. A. 112, Sec. 2; 1 Stat. 275, 276, 28

U. S. C. A. following Section 723c;

Markham v. Allen, 326 U. S. 490, and cited cases.

The Honorable Circuit Court of Appeals for the Sixth Circuit committed error in dismissing said suit with prejudice, on the 5th day of June 1947, thereby affirming the District Court's error in sustaining each of the motions to dismiss filed by respondents, since said motions, each, admits all matter well plead as set out in paragraph 1 of page 29 of record and paragraph 3 of same page, which errors are also urged before this Court (R. 29 and 30).

Griffith v. Bank of N. Y., 147 F. 2nd 899;

Miama County Nat'l Bank of Paola, Kansas v.

Bancroft, 121 F. 2nd 921 Syl. 2, 3, 4, 5, 10, 11, 12;

R. C. P. Rule 12 (b), 28 U. S. C. A. following 723c.

This is a controversy and a case within the meaning of Article III of the Constitution, between each of the appellants and each of the respondents (Tr. Par. 4, (a) (b) (c) P. 29, 30).

Art. III, Sec. 2, Const. U. S.; 28 U. S. C. A. 41 (1);

28 U. S. C. A. 112, Sec. 2;

Markham v. Allen, 326 U. S. 490;

Waterman v. Canal Louisiana Bank & Trust Co.,

215 U. S. 33;

First National Bank v. Bridgeport Trust Co., 117

Fed. 969;

Garret v. First National Bank & Trust Co., 153

F. 2nd 289.

The Federal Courts cannot decline to hear the issues in a suit of which they have jurisdiction merely because the same questions are pending in a state court between the same parties; the Federal Courts cannot abdicate their authority, or duty in any case in favor of another jurisdiction.

Suydam v. Broadnax, 14 Pet. 67;

Art. III Const. U. S.;

McClelland v. Garland, 217 U. S. 258;

Hastings v. Selby Oil Co., 319 U. S. 348;  
 Pure Oil Co. v. Standard Oil Co., 2 F. 2nd 260;  
 Banon v. Burnside, 121 U. S. 186;  
 Sutton v. English, 246 U. S. 199;  
 Byers v. MaAuley, 149 U. S. 608;  
 54 Am. Jur. Sec. 8 and Sec. 343;  
 Blacker v. Thatcher, 145 F. 2nd 255;  
 Rosenberg v. Baum, 153 F. 2nd 13;  
 Markham v. Allen, 326 U. S. 490.

Respectfully submitted,

I. H. SPEARS,  
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GEORGE M. JOHNSON,  
*of Counsel.*